

Notice of DEP's Promulgation of Tugboat Escort Regulations on an Emergency Basis

Background

Chapter 251, Acts of 2004, "*An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth*" (the "Oil Spill Act" or "Act"), was signed into law by Governor Romney on August 4, 2004. The Act, which establishes a new General Laws Chapter 21M and amends several other existing general laws, went into effect immediately as an emergency law. An electronic version of the Act is found at <http://mass.gov/legis/laws/seslaw04/sl040251.htm>. The Massachusetts Department of Environmental Protection ("DEP") has issued Interim Guidance and a Fact Sheet on the Act and related Guidance on the Uniform Oil Spill Response and Prevention Fee, which can be found at <http://mass.gov/dep/bwsc/spillact.htm>.

Chapter 21M, s.6(a) provides that effective *January 1, 2005*, no tank vessel (including tank barges) carrying 6,000 or more barrels of oil shall enter or transit any area of special interest within MA waters *unless* the tank vessel is accompanied by a tugboat escort. This requirement does not apply to a self-propelled tank vessel. A tugboat escort is defined in Chapter 21M, s.1. Areas of special interest are, at present, defined in the Act to be Buzzards Bay, Vineyard Sound and Mount Hope Bay.

On December 30, 2004, a legislative amendment to the tug escort requirement in Chapter 21M, s.6, was signed into law. The legislation amends section 6 to add a new subsection (d) that authorizes DEP to allow a regulated tank vessel to enter or transit an area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort in Chapter 21M, s.1 where DEP determines that such transit is warranted due to exigent circumstances. The Commissioner of DEP may promulgate regulations to implement this authority and DEP is required report to the Legislature on July 1, 2005 and annually thereafter on how it has exercised its authority. Finally, the legislation provides that DEP's above described authority expires on July 1, 2006. The text of this legislative amendment can be found at <http://mass.gov/dep/bwsc/spillact.htm>.

The Tugboat Escort Regulations

DEP has promulgated tugboat escort regulations on an emergency basis, effective January 1, 2005. This emergency regulation coincides with the effective date in the Act and seeks to ensure that the regulated tank vessels and the relevant stakeholders have timely and specific notice as to the substantive and procedural requirements associated with DEP's regulation of tug escorts in accordance with the Act. As required by M.G.L. c. 30A, DEP will give notice to the public and hold a public hearing to receive comment on making its tugboat escort regulation effective beyond the 90 day time period that the emergency regulation is in effect.

More specifically, the tugboat escort requirements are contained in 314 CMR 19.00, the Oil Spill Prevention and Response Regulations, which can also be found at <http://mass.gov/dep/bwsc/spillact.htm>.

Note: In publishing the emergency regulations, the Secretary of State changed the CMR designation from 314 CMR 13.00 to 314 CMR 19.00. At the outset, 314 CMR 19.00 addresses the tugboat escort requirement only, but DEP's intent is to expand 314 CMR 19.00 to regulate other areas under the Act that are the responsibility of DEP to administer and enforce. The purpose of the tugboat escort regulation is to reduce the risk of oil spills from tank vessels transiting Buzzards Bay, Vineyard Sound and Mount Hope Bay by requiring regulated tank vessels to use a tugboat escort while transiting such areas.

In general, DEP's tugboat escort regulations incorporate the statutory definition of a "tugboat escort," set forth minimum standards for equipment and personnel on tug escorts (based on DEP's review of relevant provisions of California's tug escort regulations), and require tug escorts to certify their compliance with the statutory design requirements, hold a pre-escort conference between the tugboat captain and the vessel master, and report on their activities to DEP and the relevant pilot commissioner.

Consistent with the above referenced legislative amendment, the regulations also authorize DEP to authorize, on a case-by-case basis, a regulated tank vessel to enter or transit an area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort in Chapter 21M, s.1 where DEP determines that such transit is warranted due to the following exigent circumstances:

- there are no tugboat escorts reasonably available to accompany the tank vessel in the relevant area of special interest; or
- the delay in waiting for an available tugboat escort has or may reasonably result in a significant disruption of energy services to the public; or
- the existence or threat of a public health or public safety emergency or other unique circumstances warrant the Department's exercise of its enforcement discretion.

Any request for DEP permission to authorize a tank vessel to transit under the above circumstances should be made by contacting DEP's 24 hour Emergency Spill Reporting Line at **888-304-1133**.

In making such a request, the tank vessel owner or operator must demonstrate to DEP's satisfaction that they satisfy one or more of the exigent circumstances criteria in the regulations, including describing efforts made to obtain the services of a tugboat escort. If DEP approves the request, the tank vessel owner or operator must submit a follow-up written report to DEP, within the timeframe specified by DEP, that explains the basis for the exigent circumstances claim and provides the factual supporting information for such claim. Tank vessel owner or operators who fail to support a claim of exigent circumstances, make false statements to DEP, or violate the conditions of any approval by DEP shall be subject to enforcement, which may include significant penalties.

No Department approval authorizing a tank vessel to enter or transit an area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort in Chapter 21M, s.1, shall be construed to relieve or otherwise limit the liability of the owner or operator of a tank vessel for any release of oil, hazardous material, or hazardous waste that occurs while the tank vessel enters or transits an area of special interest without a tugboat escort.